

RICKY RAY HEMOPHILIA RELIEF FUND ACT OF 1998

MAY 7, 1998.—Ordered to be printed

Mr. ARCHER, from the Committee on Ways and Means,
submitted the following

REPORT

[To accompany H.R. 1023]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 1023) to provide for compassionate payments with regard to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus due to contaminated blood products, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments are as follows:

Strike paragraph (1) of section 103(h) and insert the following:

(1) shall be treated for purposes of the Internal Revenue Code of 1986 as damages described in section 104(a)(2) of such Code;

Strike title II and insert the following:

TITLE II—TREATMENT OF CERTAIN PAYMENTS IN HEMOPHILIA-CLOTTING-FACTOR SUIT UNDER THE SSI PROGRAM

SEC. 201. TREATMENT OF CERTAIN PAYMENTS IN HEMOPHILIA-CLOTTING-FACTOR SUIT UNDER THE SSI PROGRAMS.

(a) PRIVATE PAYMENTS.—

(1) **IN GENERAL.**—Notwithstanding any other provision of law, the payments described in paragraph (2) shall not be considered income or resources in determining eligibility for, or the amount of—

(A) medical assistance under title XIX of the Social Security Act, or

(B) supplemental security income benefits under title XVI of the Social Security Act .

(2) **PRIVATE PAYMENTS DESCRIBED.**—The payments described in this subsection are—

(A) payments made from any fund established pursuant to a class settlement in the case of *Susan Walker v. Bayer Corporation, et al.*, 96–C–5024 (N.D. Ill.); and

(B) payments made pursuant to a release of all claims in a case—

(i) that is entered into in lieu of the class settlement referred to in subparagraph (A); and

(ii) that is signed by all affected parties in such case on or before the later of—

(I) December 31, 1997, or

(II) the date that is 270 days after the date on which such release is first sent to the persons (or the legal representative of such persons) to whom the payment is to be made.

(b) GOVERNMENT PAYMENTS.—

(1) **IN GENERAL.**—Notwithstanding any other provision of law, the payments described in paragraph (2) shall not be considered income or resources in determining eligibility for, or the amount of supplemental security income benefits under title XVI of the Social Security Act.

(2) **GOVERNMENT PAYMENTS DESCRIBED.**—The payments described in this subsection are payments made from the fund established pursuant to section 101 of this Act.

I. INTRODUCTION

A. PURPOSE AND SCOPE

H.R. 1023, the “Ricky Ray Hemophilia Relief Fund Act of 1998,” provides “compassionate payments” to individuals with blood-clotting disorders, such as hemophilia, who contracted human immunodeficiency virus (HIV) from tainted blood products. Authorization of the \$750 million Federal fund, which would make payments of \$100,000 to eligible individuals who contracted HIV from the tainted blood products, is under the jurisdiction of the Committee on the Judiciary. Information about H.R. 1023 and its background can be found in the Judiciary Committee’s report (105th Congress, 2nd Session, Rept. 105–465, Part 1). The Committee on Ways and Means has jurisdiction over how payments to eligible individuals are treated for purposes of determining the eligibility and benefit levels of recipients under the Supplemental Security Income (SSI) program, and over the tax treatment of these payments.

B. BACKGROUND AND NEED FOR LEGISLATION

Under current law, payments to victims of hemophilia who received tainted blood products would be treated as income by most welfare programs, including the Supplemental Security Income program. Thus, without Committee action, individuals eligible for both Federal payments under H.R. 1023 as well as payments from a class action lawsuit brought against the pharmaceutical companies that supplied the tainted blood would be treated as income or resources by the SSI program. As a result, most individuals receiving payments would either lose or experience a sharp reduction in their SSI benefit payments. Action by the Committee on Ways and Means on H.R. 1023 is necessary to prevent this loss of benefits.

In addition, the authors of the legislation intended that these payments are to be treated as tax exempt. Action by the Committee on Ways and Means is necessary to ensure this.

C. LEGISLATIVE HISTORY

Committee bill

On April 22, 1998, the Committee ordered favorably reported H.R. 1023, as amended, by voice vote.

II. EXPLANATION OF PROVISIONS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS

A. TAX TREATMENT OF CERTAIN PAYMENTS MADE TO INDIVIDUALS WITH BLOOD-CLOTTING DISORDERS (SECTION 103(h))

Present law

Under present law, gross income does not include any damages received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of a personal physical injury or physical sickness.¹ If an action has its origin in a physical injury or physical sickness, then all damages (other than punitive dam-

¹ Internal Revenue Code section 104(a)(2).

ages) that flow therefrom are treated as payments received on account of physical injury or physical sickness whether or not the recipient of the damages is the injured party. The term “damages received (whether by suit or agreement)” is defined under Treasury regulations to mean an amount received (other than workmen’s compensation) through prosecution of a legal suit or action based upon tort or tort type rights, or through a settlement agreement entered into in lieu of such prosecution.²

Explanation of provision

The bill is amended to provide that payments to certain individuals with blood-clotting disorders, who contracted HIV due to contaminated blood products, pursuant to the provisions of the bill are treated for purposes of the Internal Revenue Code as damages received on account of personal physical injury or physical sickness described in section 104(a)(2). Thus, payments made to such individuals are excluded from gross income.

Reasons for change

The Committee has agreed to clarify the tax treatment of certain “compassionate” payments made to individuals with blood-clotting disorders who contracted the human immunodeficiency virus (“HIV”) because the Committee believes that, in the absence of such clarification, such payments generally are not excluded from gross income under the present-law exclusion for damage payments. Whether such amounts might be excluded from income under some other provision of the Internal Revenue Code or regulations is unclear. The Committee finds the payments proposed under the bill to be sufficiently unusual and sympathetic to justify clarifying that such payments are not included in gross income. However, the Committee emphasizes that it is taking action because of the extraordinary nature of the problem that is addressed by the bill.

Effective date

The provision is effective on the date of enactment.

B. TREATMENT OF CERTAIN PAYMENTS IN HEMOPHILIA-CLOTTING-FACTOR SUIT UNDER THE SSI PROGRAM (SECTION 201)

Present law

Under the SSI program, income is anything a person receives that can be used to obtain food, clothing, or shelter, unless it is specifically exempted by Federal law. In recent years, many compensatory payments have been excluded from being counted as income and/or resources under the SSI program. Sometimes an individual is given food, clothing, or shelter directly; more often an individual is given a cash payment that can be used to purchase food, clothing, or shelter. The SSI program does not count all income. There are more than 50 income exclusions under the SSI program, all of which provide a financial advantage to persons who receive certain types of income. Most income exclusions for SSI are written

²Treas. Reg. section 1.104–1(c).

into the Social Security Act, but some are also written into statutes governing other programs. These other statutory exclusions stipulate that the payment in question is not to be counted as income or resources in determining an individual's SSI eligibility or benefit status. The following is a list of compensatory-type payments in which the authorizing statute specified that the SSI program was not to consider the payment as income (or a resource) in determining a person's SSI eligibility or benefit status:

Restitution payments made to Japanese internees and relocated Aleutians (P.L. 100-383, enacted August 10, 1988);

Payments from the Agent Orange settlement (P.L. 101-239, enacted December 19, 1989);

Payments received from a state-administered fund established to aid victims of crime (P.L. 101-508, enacted November 5, 1990);

Payments received as state or local government relocation assistance (P.L. 101-508, enacted November 5, 1990—made permanent in P.L. 103-66, enacted August 10, 1993);

Payments received under the Radiation Exposure Compensation Act (P.L. 101-508, enacted November 5, 1990);

Hostile fire pay to members of the uniformed services (P.L. 103-66, enacted August 10, 1993); and

Payments to victims of Nazi persecution (P.L. 103-286, enacted August 1, 1994).

Under a recent settlement, four manufacturers of blood plasma products will pay \$100,000 to each of 6,200 hemophilia patients who are infected with the human immunodeficiency virus (HIV). Payments made under the settlement to these individuals would in most instances cause them to exceed the income and/or resource limits for SSI and Medicaid eligibility. Pursuant to section 4735 of P.L. 105-33, the settlement payments are not considered income and/or resources in determining eligibility for, or the amount of benefits under, the Medicaid program. However, section 4735 of P.L. 105-33 does not provide a similar exemption for the SSI program. Thus, the settlement payments currently are counted as income and/or resources under the SSI program. In addition, payments from the fund authorized by section 101 of H.R. 1023 also would be counted as income and/or resources under the SSI program, should payment be made from this fund without the creation of the exception provided for in this legislation.

Explanation of provision

The Committee provision stipulates that neither settlement payments in the hemophilia-clotting-factor suit nor payments from the Federal Ricky Ray Hemophilia Relief Fund are to be considered income or resources in determining eligibility for, or the amount of benefits under, the SSI program.

Reason for change

The Committee provision is designed to ensure that individuals and their families who have suffered greatly through contraction of the human immunodeficiency virus (HIV) from tainted blood products remain eligible for continued Federal support, including new assistance designed to help them. For example, a number of the in-

dividuals in the settlement class are currently on SSI and Medicaid. However, because these programs are means-tested, accepting the private settlement money (\$100,000 per plaintiff) and the public "compassionate payments" (also \$100,000 per person) may disqualify the recipients from these programs. This despite the fact that the average person with hemophilia spends about \$100,000 per year on clotting factor, and those with HIV spend approximately \$10,000 to \$50,000 in additional medical expenses for AIDS-related treatment.

Congress acted in the 1997 Balanced Budget legislation to exempt settlement payments from affecting Medicaid eligibility. Given the high amount of health care and other expenses individuals afflicted with HIV face each year and the intent of the settlement, making a similar exception for SSI has equal merit. Without the changes provided for in the Committee amendment, many individuals might no longer qualify for Federal SSI benefits due to their receipt of payments from the hemophilia-clotting-factor suit. An exception is also made to aid from the new Federal Ricky Ray Hemophilia Relief Fund, so that payments from it as well would be exempted from consideration for purposes of determining SSI eligibility and benefits.

Effective date

Upon enactment.

III. VOTES OF THE COMMITTEE

In compliance with clause 2(1)(2)(B) of rule XI of the Rules of the House of Representatives, the following statements are made concerning the vote of the Committee in its consideration of the bill, H.R. 1023:

MOTION TO REPORT THE BILL

On April 22, 1998, the Committee ordered favorably reported H.R. 1023, as amended, by voice vote, with a quorum present.

IV. BUDGET EFFECTS OF THE BILL

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statement is made:

The Committee agrees with the estimate prepared by the Congressional Budget office (CBO) which is included below.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that the Committee bill results in no new budget authority and has no effect on federal revenues.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET
OFFICE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives requiring a cost estimate prepared by the Congressional Budget Office (CBO), the following report prepared by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 4, 1998.

Hon. BILL ARCHER,
*Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1023, the Ricky Ray Hemophilia Relief Fund Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Anne Cappabianca.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 1023—Ricky Ray Hemophilia Relief Fund Act of 1998

Summary: H.R. 1023 would authorize \$750 million to make compensatory payments to hemophiliacs who contracted HIV from an antihemophilic factor, and to certain of their family members. By accepting payments, individuals would agree that any claim they have against the federal government would be fully satisfied. The bill also would exclude from eligibility determinations for Medicaid and Supplemental Security Income (SSI) benefits settlement payments from private lawsuits by hemophiliacs who contracted HIV.

Assuming the authorized amounts would be appropriated, CBO estimates that H.R. 1023 would result in additional discretionary spending of \$767 million over the 1998–2003 period. The bill would also increase direct spending by \$18 million and therefore be subject to pay-as-you-go procedures. H.R. 1023 does not contain any intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1023 is shown in the following table. For the purposes of this estimate, CBO assumes an enactment date of July 1, 1998.

	By fiscal years, in millions of dollars					
	1998	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	752	3	3	3	3	2
Estimated Outlays	2	116	228	228	116	77
DIRECT SPENDING						
Estimated Budget Authority	1	5	4	3	3	2
Estimated Outlays	1	5	4	3	3	2

The costs of this legislation fall within budget functions 550 (Health) and 600 (Income Security).

Basis of estimate

Title I

H.R. 1023 would authorize \$750 million to be placed in a trust fund, from which compensatory payments would be made to qualified claimants. Eligible claimants include individuals with blood-clotting disorders who contracted HIV from a contaminated antihemophilic factor between July 1, 1982, and December 1, 1987. Spouses of these patients also qualify as claimants, provided they demonstrate that they contracted HIV from their infected spouse. Finally, any children of these couples who contracted HIV perinatally could petition for payments. Claimants must be able to submit medical documentation of their HIV status, a hemophilia diagnosis, and the date of the antihemophilic factor treatment.

The Secretary of Health and Human Services would administer the trust fund, which would pay \$100,000 to each approved claimant. Claims would be paid in the order received until the fund is depleted. However, the Secretary could make payments for only five years after enactment of the bill. For the purposes of this estimate, CBO assumes that payments would equal the amount authorized.

If a claimant died before filing a petition, his survivors could submit a petition in his name. If the claimant died before the claim was settled, payment would be made to his spouse, children, or parents, in that order. In accepting these payments, petitioners would agree that any claims they have against the government or its agents are fully satisfied.

The bill provides that all claims must be filed within three years of its enactment. Therefore, CBO assumes that the majority of payments from the fund would occur during the first four years of the program's operation. We also assume that payments would not start until fiscal year 1999, when outlays would total \$113 million.

H.R. 1023 specifies that, for tax purposes, payments from the fund would be considered damages received on account of personal injuries or sickness. However, this provision would not affect federal revenues since, under current law, there would be no compensatory payments that could be taxed. The bill also stipulates that, in determining eligibility for Medicaid or other entitlement benefits under section 3803(c)(2)(C) of title 31 of the United States Code, payments to claimants could not be counted as income or resources.

Under the proposal, individuals accepting payments from the fund agree not to pursue any further claim against the federal government. These claims might have taken the form of individual lawsuits against the federal government, or of a class-action lawsuit. CBO cannot estimate the amount of the government's liability, if any, under current law. However, it is possible that this provision of the bill could yield some savings to the federal government.

Finally, the bill would require that administrative costs not be paid from the fund's appropriation. Based on the administrative costs of other, similar federal trust funds, CBO estimates that the

fund's administrative costs would be \$2 million in 1998, and \$16 million over the 1998–2003 period.

Title II

Thousands of hemophiliacs who contracted HIV through contaminated blood products have filed lawsuits against the manufacturers of those blood products. H.R. 1023 would exempt any settlement payments arising from these lawsuits from consideration as income or resources in determining eligibility for Medicaid or SSI benefits. Most payments will be part of a class settlement in the *Susan Walker v. Bayer Corporation, et al.* case. (This settlement is also known as the *In Re Factor VII or IX Concentrate Blood Products Litigation* settlement.) Under this settlement, hemophiliacs or their survivors would receive a payment of \$100,000 per case of HIV infection. These settlement payments have already been exempted from Medicaid eligibility determinations by the Balanced Budget Act of 1997.

Under current law settlement payments are treated as income in SSI eligibility determinations. The size of the payments in the *Susan Walker v. Bayer* settlement and other lawsuits would almost certainly make individuals currently receiving SSI ineligible. H.R. 1023 thus preserves SSI eligibility for a group of people who would otherwise become ineligible.

Approximately 3,250 hemophiliacs who have contracted HIV through tainted blood products are currently alive. Of this total, CBO estimates that 1,300 people are receiving SSI benefits. A small number of these individuals would not be affected by the bill because they will place their settlement payments in a special needs trust, which preserves their SSI eligibility. The estimated cost of preserving SSI eligibility for the remaining beneficiaries will be \$1 million in 1998, \$5 million in 1999, and less in subsequent years.

Pay-as-you-go-considerations: The provisions of Title II of this bill would affect direct spending and would therefore be subject to pay-as-you-go procedures. The pay-as-you-go effects of the bill are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal years, in millions of dollars—											
	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	
Change in outlays	1	5	4	3	3	2	2	2	1	1	1	
Change in receipts	Not applicable											

Estimated impact on State, local, and tribal government: H.R. 1023 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA). By excluding payments from the *Susan Walker v. Bayer Corporation, et al.* and other settlements from being used to consider SSI eligibility, some SSI recipients would remain eligible for state benefits. However, CBO estimates that the cost of these benefits would be less than \$500,000 annually and that states have sufficient authority to amend their financial or programmatic responsibilities to offset these costs.

Estimated impact on the private sector: None.

Comparison with other estimates: On March 20, 1998, CBO released an estimate for H.R. 1023 as ordered reported by the House Committee on Judiciary. CBO estimated that that version of H.R. 1023 would increase discretionary spending by \$767 million and direct spending by \$17 million over the 1998–2003 period. The Ways and Means version of the bill would have a slightly larger impact on direct spending because it exempts from SSI eligibility determinations all private settlement payments. The Judiciary version covered only payments stemming from the *In Re Factor VIII* or *IX* settlement.

Estimate prepared by: Federal Costs: Anne Cappabianca (Title I), and Eric Rollins (Title II). Impact on State, Local, and Tribal Governments: Leo Lex. Impact on the Private Sector: Julia Matson.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

V. OTHER MATTERS REQUIRED TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that it was the result of its oversight of the Supplemental Security Income program and the tax laws that it deemed the action taken to be appropriate.

B. SUMMARY OF FINDINGS AND RECOMMENDATIONS OF THE GOVERNMENT REFORM AND OVERSIGHT COMMITTEE

In compliance with clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee states that no oversight findings or recommendations have been submitted to the Committee on Government Reform and Oversight regarding the subject of the bill.

C. CONSTITUTIONAL AUTHORITY STATEMENT

With respect to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, relating to Constitutional Authority, the Committee states that the Committee's action in reporting the bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and to provide for * * * the general Welfare of the United States * * *"), and the 16th amendment to the Constitution.